

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 16-17, 2004

Reference No.: 2.4a.(4)
Action Item

From: ROBERT L. GARCIA
Chief Financial Officer

Prepared by: Brice D. Paris
Division Chief
Right of Way

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-18919, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-18919 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-18919 - Pablo Guerrero, et al.

06-Fre-180-KP 87.9-Parcel 85320-1A - EA: 303709 - Certification Date: 07/01/04 - (Conventional highway - widen shoulders, signalization, channelization and raise profile). Authorizes condemnation of land in fee for a State highway. Located near the unincorporated area of Fresno at 2640 West Whitesbridge Road.

SUMMARY OF ISSUES

Mr. and Mrs. Pablo Guerrero are the owners of Westside Auto Dismantlers, located on the north side of existing State Route 180, in Fresno, 200 meters east of Marks Avenue. Neither the Guerrero's nor their legal counsel, Mr. Fitzgerald attended the First or Second Level Hearings. The First Level Hearing was held on February 19, 2004 in Fresno at the District satellite office. The Second Level Hearing was held at the District satellite office on April 14, 2004. Mr. Fitzgerald was notified by mail of both hearing dates with a follow-up contact by telephone to discuss rescheduling of the hearings. Mr. Fitzgerald declined attending either meeting and did not want to reschedule the hearings. The following objections appeared in a letter dated January 12, 2004 to the Commission from Mr. Fitzgerald. Following the owner's objection is a summary of the Department's response.

Owner:

"That adoption of the amendment to the resolution would be in violation of law because the Commission has failed to comply with applicable statutory procedures which are prerequisites to such a resolution, including the requirements of the California Environmental Quality Act."

Department Response:

The Department followed all of the environmental guidelines of both California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA), and has received full environmental clearance under both Federal and State laws. The project was determined to be Categorical Exempt (CEQA) and Categorical Excluded (NEPA). Concurrence was obtained from the Federal Highway Administration regarding the NEPA determination on February 2, 2003.

Owner:

"The failure to furnish a proper Appraisal Summary Statement."

Department Response:

The First Written Offer was made to Mr. Guerrero on April 14, 2002. The Department's approved Appraisal Summary Statement was included in the documents provided at said offer. A follow-up copy was mailed to Mr. Fitzgerald on May 1, 2003, per Mr. Guerrero's direction. All required data and basis for opinion of value were included at the time of the First Written Offer.

Owner:

"The failure to conform to procedural requirements."

Department:

The Department followed all legally required procedures, as well as Department Policies and standard procedures, in their attempt to acquire the parcel.

Owner:

“The failure to make a proper Government Code 7267.2 offer.”

Department

A First Written Offer was made to Mr. Guerrero on April 14, 2002. At the property owner's request, a written offer for the full amount of the Department's approved appraisal was mailed to Mr. Fitzgerald, the owner's attorney, on May 1, 2003, in full compliance with Government Code 7267.2. Included in the First Written Offer package mailed to the owner on May 1, 2003, were the Right of Way Contract stating the proposed written terms and conditions of agreement, along with the informative brochures, a copy of the Grant Deed with the legal description and maps, and the Appraisal Summary Statement.

Owner:

“The failure to provide a form of the proposed resolution which effectively precludes any comment, objection, etc., by the owners, exacerbated by the inability to attend a meeting without sufficient notice.”

Department:

The Department provided the owners and their legal counsel the opportunity to participate in a First and Second Level review process, as a forum to effectively communicate issues and concerns, and to discuss and resolve project and acquisition issues. Mr. and Mrs. Guerrero and their legal counsel declined to participate in either of these meetings despite both written and telephone notifications to Mr. Fitzgerald.

Owner:

“The Notice fails to satisfy the time requirements of California Civil Code of Procedure (CCP) 1245.235 and CCP 1013.”

Department:

CCP 1245.235 addresses the adoption of a resolution of necessity by a governing body of a public entity. It requires that each person whose name appears on the last equalized county assessment roll, and whose property is to be acquired by eminent domain, receive a notice by first class mail at least fifteen days prior to said meeting of the intent of the governing body to adopt the resolution, and the right of each person to appear and be heard. CCP 1013 addresses the procedure of service by mail, Express Mail or facsimile. CCP 1245.235 and CCP 1013 mailing requirements were met. The original Notice of Intent for the February 25-26, 2004 Commission meeting was mailed January 9, 2004 to Mr. Guerrero, 47 days prior to the Commission meeting. A Notice of Intent for the June 16-17, 2004 Commission meeting in Los Angeles was mailed on April 30, 2004, 47 days prior to said meeting. A follow up letter will be mailed to the property owner informing him of the date, address and approximate time of the June 16-17, 2004 Commission meeting when the timed agenda becomes available.

June 16-17, 2004

Owner:

“The failure to conduct a hearing at convenient situs more readily available than Sacramento to the owners.”

Department:

The Commission has jurisdiction for the entire State of California and therefore Commission meetings are held at various locations throughout the state. The initial noticed Commission meeting on February 25-26, 2004 was held in Sacramento. The June 16-17, 2004 Commission meeting will be held in Los Angeles.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA:

06-Fre-180-KP 87.4/88.2, EA 303701

Location:

State Route 180 in the city of Fresno, in Fresno County

Limits:

From 045 km east of Marks Avenue to 0.45 km west of Marks Avenue

Cost:

Current construction cost estimate \$730,000

Funding Source:

SHOPP – 20.XX.201.010 HB-1 Safety Project

Number of Lanes:

Existing: 2-12 foot lanes, 0-2 foot shoulders
Proposed: 2-12 foot lanes, 8 foot shoulders

Proposed Major Features

Reconstruction of the Marks Avenue intersection, traffic signal, profile correction, construction of a left turn channelization, and construction of shoulders.

Traffic:

Existing Average Daily Traffic (ADT) (year 2002): 6,600
Proposed ADT (year 2002): 12,900

PARCEL DATA:

Property Owner:

Amelia O. Guerrero and Pablo Guerrero

Parcel Location:

Assessor's Parcel Number (APN) 458-080-030, is located 200 meters east of Marks Avenue on the north side of State Route 180

Present Use:

Westside Auto Dismantlers

Area of Property:

39,763.4 square meters (9.8 acres)

Area Required:

Parcel 85320 = 603.6 square meters in fee (6,496.7 square feet)

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met April 14, 2004 in Fresno. The Panel members consisted of Vern Rhinehart, Department Headquarters (HQ's) Right of Way; Richard B. Williams, Department HQ's Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. Neither Mr. Guerrero nor his legal counsel, Mr. Fitzgerald, were present at the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

The existing State Route 180 is an east-west two-way highway with straight tangent alignment, level grade and good sight distance. The roadway has two 3.6-m wide lanes and 0.0 to 0.6-m wide shoulders constructed of asphalt concrete (AC). The route is a major highway that provides the primary passage between the cities of Kerman and Fresno with a high volume of local traffic generated by commuters between the two cities. The current Average Daily Traffic (ADT) on State Route 180 is 6,600 vehicles per day (vpd) and the future 20-year ADT is projected to be 12,900 vpd. The local cross street, Marks Avenue, consists of two 3.6-m lanes constructed of asphalt concrete with no shoulders.

Problems, Deficiencies and Justifications

The existing State Route 180 and Marks Avenue intersection requires upgrading to improve safety and adequately handle the current traffic demands on the intersection. The accident history for the highway section indicates that the actual accident rates are over five times higher than the statewide average accident rates for similar roadways with comparable traffic volumes. Other deficiencies include: lack of channelization lanes, little to no shoulders, pavement distresses, flooding due to improper profile grade and the existence of stationary objects inside the clear recovery zone.

Traffic Data

Table 1: Design Designation for the State Route 180.

Table 1 Forecasted Traffic Data.

<i>Traffic Designation</i>	Design Period	
	2002-2012	2002-2022
ADT (2002)	6,600	6,600
ADT (2012)	9,300	---
ADT (2022)	---	12,900
DHV (2012)	930	---
DHV (2022)	---	1,300
% Peak Directional Vol.	64	64
% Truck Design hourly Vol.	7	7
Traffic Index (TI)	9.5	10.5
Equivalent Single Axle Load (ESAL)	1,690,000	4,160,000

The accident rates, in accidents per million vehicles, at the Marks Avenue Intersection compared with the statewide average for the most recent three-year study period (04-01-97 to 03-31-00) is listed in Table 1. Sixteen accidents were reported at this intersection classified as: twelve broadside, two head-on and two rear-end. The "Failure to yield" was the plausible cause for approximately 63 percent of the reported accidents. The analysis of accident data indicates that the majority of accidents are caused by the lack of left-turn channelization lanes and traffic signals. The accident data analysis also indicates that the remaining 27 percent of the reported accidents are related to driving under the "Influence of Alcohol" and "Other Violations".

Due to the accident rate at this intersection the project is funded as a Safety Project. Safety projects are the highest priority projects.

PROJECT DESIGN

This project is in Fresno County on existing State Route 180 just west of the city of Fresno. The project involves the reconstruction of the Marks Avenue intersection. The project was initiated in 1992 due to known flooding problems on State Route 180 both east and west of the Marks Avenue intersection.

Design work began on the project at that time with the original scope of work including a profile correction, the construction of left turn channelization on the State Route 180 mainline, and the construction of shoulders throughout the project limits. Shortly after the project's initiation, due to lack of funding, the project was put on the shelf. In 2000, funding for the project became available and work on the project was resurrected. In April 2001, traffic data indicated the need for traffic signals. This work was then included into the project. The inclusion of this work caused the cost of the project to be in excess of the \$750,000 Minor A program funding limit and the project was shifted into the State Highway Operation and Protection Plan (SHOPP) to be funded as a major project.

The current scope of work includes: a profile correction to eliminate flooding of the highway; traffic signals to improve the operation and safety of the intersection; left turn channelization to improve the operation of the intersection; and the construction of shoulders throughout the project limits on State Route 180. The shoulders are necessary to improve safety of the highway and to meet current State and Federal design standards.

NEED FOR SUBJECT PROPERTY

The parcel is required for a safety project on existing State Route 180 at the Mark Avenue intersection. The District Design branch responsible for preparing the project plans re-examined the need for the property to see if the scope of work could be reduced or if another strategy could be used to minimize, or possibly eliminate, the need for the property. The project is currently designed to minimum design standards. Using a symmetrical widening strategy, the highway improvements cannot be constructed without impacting the Guerrero property. The design includes minimum taper and storage lengths for the left turn lane, minimum shoulder widths, minimum clear recovery area, and minimum depth side ditches.

In addition to evaluating the design for down scoping the project, the design branch looked at another strategy attempting to reduce or eliminate impacts to the Guerrero property. This strategy, an asymmetrical widening strategy, looked at the widening of the roadway on the opposite side of the Guerrero property. Shifting the highway to the other side of the roadway would impact one residence, a farm related structure, and a church, and would require additional cost and disruption to these properties. This strategy would also put a kink in the highway alignment, an alignment that is currently a straight tangent running for miles in each direction from the project. The following is a description of the concerns, which Mr. and Mrs. Guerrero's legal counsel has expressed and the District's response.

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PARCEL DESCRIPTION

The subject parcel (Parcel No. 85320) is located on the southerly 6,496.7 square feet of APN 458-080-03 in Fresno County. The total area of the property is approximately 9.8 acres or 428,000 square feet. The property is the site of Westside Auto Dismantlers. The subject parcel is a fairly flat unpaved area being used for customer parking.

STATUTORY OFFER TO PURCHASE


The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record.

PANEL RECOMMENDATION

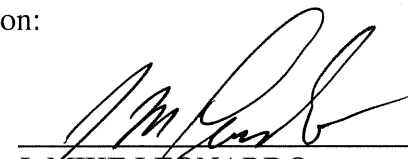
The Panel concludes that the District's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.


VERNON V. RHINEHART
Panel Chair

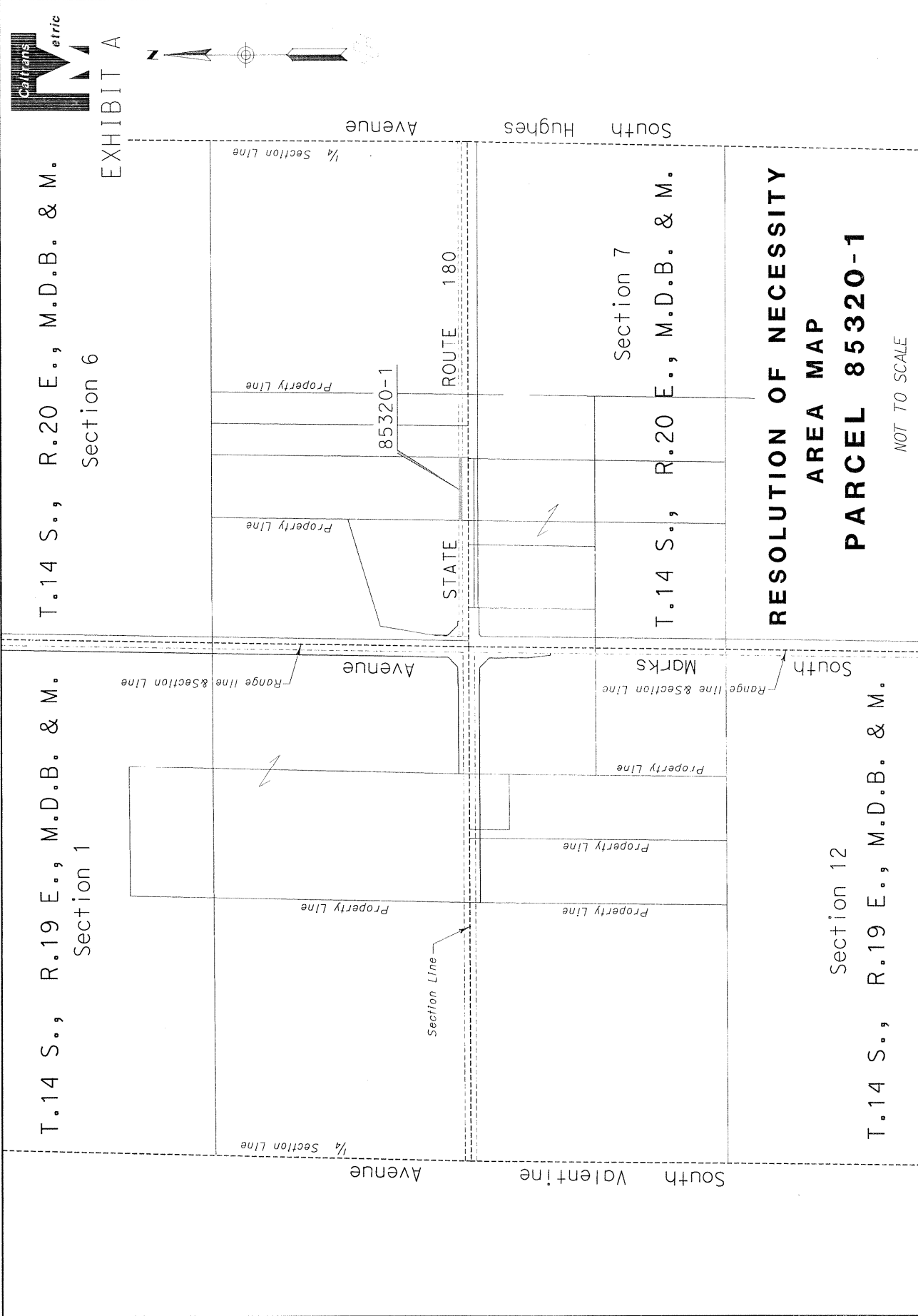
I concur with the Panel's recommendation:


J. MIKE LEONARDO
Acting Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON APRIL 14, 2004**

Vern Rhinehart, Headquarters Right of Way, Panel Chair
Richard B. Williams, Headquarters Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

Jay Norvell, Central Region Acting District Director
Kim Anderson, District 6, Chief Project Development
Randeem Walter, District 6, Region Division Chief Right of Way
Tony McDowell, District 6, Supervisor Right of Way
Brian Everson, District 6, Project Management
Mike Duarte, District 6, Design
Mike Rastegar, Central Region, Project Management
Tak Tsuda, District 6, Senior Right of Way
Michael Janzen, Headquarters, Design
Ken Cozad, Headquarters, Design
Gail Miller, District 6, Environmental Planning



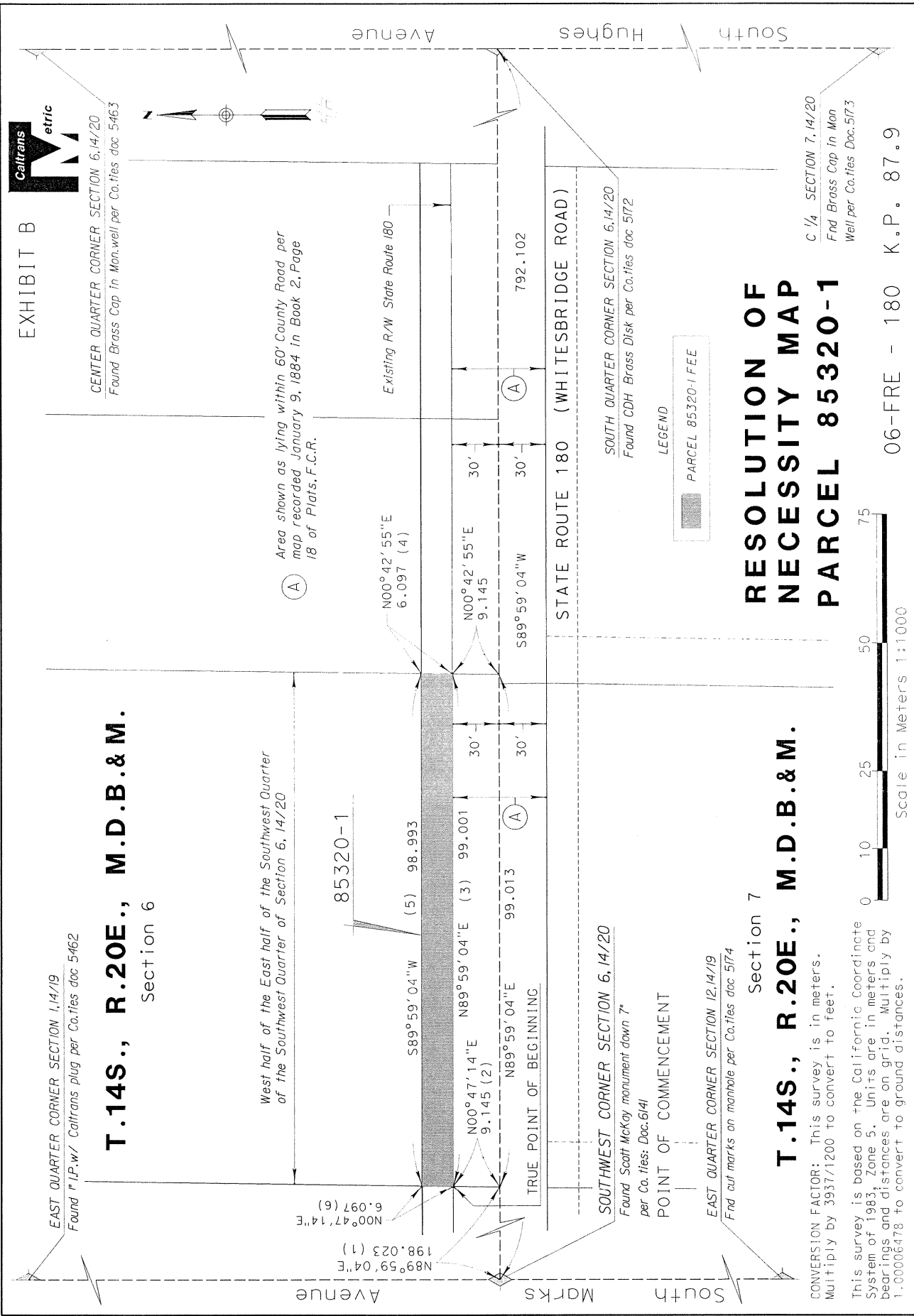


EXHIBIT B



CENTER QUARTER CORNER SECTION 6, 14/20
Found Brass Cap in Mon. well per Co. files doc 5463

T.14S., R.20E., M.D.B.&M.
Section 6

West half of the East half of the Southwest Quarter
of the Southwest Quarter of Section 6, 14/20

(A) Area shown as lying within 60' County Road per
map recorded January 9, 1884 in Book 2, Page
18 of Plats, F.C.R.

85320-1

Existing R/W State Route 180

STATE ROUTE 180 (WHITESBRIDGE ROAD)

SOUTH QUARTER CORNER SECTION 6, 14/20
Found CDH Brass Disk per Co. files doc 5172

LEGEND
PARCEL 85320-1 FEE

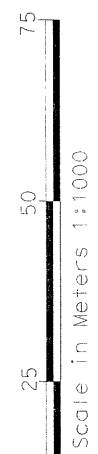
**RESOLUTION OF
NECESSITY MAP
PARCEL 85320-1**

T.14S., R.20E., M.D.B.&M.
Section 7

CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 5. Units are in meters and
bearings and distances are on grid. Multiply by
1.00002478 to convert to ground distances.

C 1/4 SECTION 7, 14/20
Found Brass Cap in Mon
Well per Co. files Doc. 5173



06-FRE - 180 K.P. 87.9